



January 18, 2002

SENATE BILL No. 447

DIGEST OF SB 447 (Updated January 17, 2002 10:48 AM - DI 105)

Citations Affected: IC 10-1; IC 33-14; IC 33-19; IC 34-28.

Synopsis: State police laboratory fund. Establishes the state police laboratory fund to pay for certain expenditures associated with the state police laboratory. Specifies that the fund consists of a \$15 state police laboratory fee collected from defendants who: (1) commit crimes; (2) commit infractions; or (3) participate in certain deferred prosecutions.

Effective: July 1, 2002.

Bray, Alexa

January 14, 2002, read first time and referred to Committee on Judiciary.
January 17, 2002, amended, reported favorably — Do Pass; reassigned to Committee on Finance.

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SB 447—LS 6881/DI 69+



January 18, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 447

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-1-1-29 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]: **Sec. 29. (a) The state police laboratory fund is established**
4 **for the purpose of supplementing appropriations otherwise**
5 **available to the department for:**

6 (1) **personnel expenditures;**
7 (2) **other operating expenditures, including training;**
8 (3) **capital expenditures; and**
9 (4) **payment of contracts with private entities or higher**
10 **education institutions (as defined in IC 20-12-5.5-1)**
11 **concerning DNA (as defined in IC 10-1-9-2) analysis work;**
12 **associated with the state police laboratory. The fund shall be**
13 **administered by the superintendent.**

14 (b) **The fund consists of the following:**

15 (1) **State police laboratory fees deposited under the following:**

16 (A) **IC 33-14-1-7(d).**

17 (B) **IC 33-19-7-1(g).**

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1 (C) IC 34-28-5-1(f)(5)(B).

2 (2) Appropriations to the fund from other sources.

3 (3) Grants, gifts, and donations intended for deposit in the
4 fund.

5 (c) Money in the fund may not be expended unless it has been
6 appropriated by the general assembly.

7 (d) The expenses of administering the fund shall be paid from
8 money in the fund.

9 (e) The treasurer of state shall invest the money in the fund not
10 currently needed to meet the obligations of the fund in the same
11 manner as other public money may be invested. Interest that
12 accrues from these investments shall be deposited in the state
13 general fund.

14 (f) Money in the fund at the end of a state fiscal year does not
15 revert to the state general fund.

16 SECTION 2. IC 33-14-1-7 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) A prosecuting
18 attorney may withhold prosecution against an accused person if:

19 (1) the person is charged with a misdemeanor;

20 (2) the person agrees to conditions of a pretrial diversion program
21 offered by the prosecuting attorney; and

22 (3) the terms of the agreement are recorded in an instrument
23 signed by the person and the prosecuting attorney and filed in the
24 court in which the charge is pending.

25 (b) An agreement under subsection (a) may include conditions that
26 the person:

27 (1) pay to the clerk of the court an initial user's fee and monthly
28 user's fees in the amounts specified in IC 33-19-5-1;

29 (2) work faithfully at a suitable employment or faithfully pursue
30 a course of study or vocational training that will equip the person
31 for suitable employment;

32 (3) undergo available medical treatment or counseling and remain
33 in a specified facility required for that purpose;

34 (4) support the person's dependents and meet other family
35 responsibilities;

36 (5) make restitution or reparation to the victim of the crime for the
37 damage or injury that was sustained;

38 (6) refrain from harassing, intimidating, threatening, or having
39 any direct or indirect contact with the victim or a witness;

40 (7) report to the prosecuting attorney at reasonable times;

41 (8) answer all reasonable inquiries by the prosecuting attorney
42 and promptly notify the prosecuting attorney of any change in

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address or employment; and

(9) participate in dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney.

(c) An agreement under subsection (a)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(d) An agreement under subsection (a) must require the defendant to pay to the clerk of the court a fifteen dollar (\$15) state police laboratory fee. Notwithstanding subsection (f), the clerk shall monthly distribute the fees collected under this subsection to the auditor of state for deposit in the state police laboratory fund established by IC 10-1-1-29.

(e) The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

~~(e)~~ (f) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-19-8.

~~(f)~~ (g) If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection (b)(6):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 3. IC 33-19-5-1, AS AMENDED BY P.L.183-2001, SECTION 4, AND AS AMENDED BY P.L.280-2001, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).

(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

(1) A document fee.

(2) A marijuana eradication program fee.

(3) An alcohol and drug services program user fee.

(4) A law enforcement continuing education program fee.

(5) A drug abuse, prosecution, interdiction, and correction fee.

(6) An alcohol and drug countermeasures fee.

(7) A child abuse prevention fee.

(8) A domestic violence prevention and treatment fee.



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- (9) A highway work zone fee.
- (10) A deferred prosecution fee (IC 33-19-6-16.2).
- ~~(11) A judicial salaries fee (IC 33-19-6-18).~~
- ~~(12)~~ (11) A document storage fee (IC 33-19-6-18.1).
- ~~(13)~~ (12) An automated record keeping fee (IC 33-19-6-19).
- ~~(14)~~ (13) A late payment fee (IC 33-19-6-20).
- ~~(15)~~ (14) A sexual assault victims assistance fee (IC 33-19-6-21).
- (15) A state police laboratory fee (IC 33-19-6-22).**

(c) Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-14-1-7 requires payment of those fees by the accused person. The pretrial diversion program fee is:

- (1) an initial user's fee of fifty dollars (\$50); and
- (2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program.

(d) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-19-8:

- (1) The pretrial diversion fee.
- (2) The marijuana eradication program fee.
- (3) The alcohol and drug services program user fee.
- (4) The law enforcement continuing education program fee.

(e) Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

- (1) First, the clerk shall apply the partial payment to general court costs.
- (2) Second, if there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk shall distribute the partial payment for deposit in the appropriate county user fee fund.
- (3) Third, if there is money remaining after distribution under subdivision (2), the clerk shall distribute the partial payment for deposit in the state user fee fund.
- (4) Fourth, if there is money remaining after distribution under subdivision (3), the clerk shall distribute the partial payment to any other applicable user fee fund.
- (5) Fifth, if there is money remaining after distribution under subdivision (4), the clerk shall apply the partial payment to any outstanding fines owed by the defendant.



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SECTION 4. IC 33-19-5-2, AS AMENDED BY P.L.1-2001, SECTION 35, AS AMENDED BY P.L.183-2001, SECTION 5, AND AS AMENDED BY P.L.280-2001, SECTION 19, IS AMENDED AND CORRECTED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Except as provided in subsections (d) and (e), for each action that results in a judgment:

- (1) for a violation constituting an infraction; or
- (2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10);

the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars (\$70).

(b) In addition to the infraction or ordinance violation costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

- (1) A document fee (*IC 33-19-6-1, IC 33-19-6-2, IC 33-19-6-3*).
- (2) An alcohol and drug services program user fee (*IC 33-19-6-7(b)*).
- (3) A law enforcement continuing education program fee (*IC 33-19-6-7(c)*).
- (4) An alcohol and drug countermeasures fee (*IC 33-19-6-10*).
- (5) A highway work zone fee (*IC 33-19-6-14*).
- (6) A deferred prosecution fee (*IC 33-19-6-16.2*).
- (7) A jury fee (*IC 33-19-6-17*).
- ~~(7) A judicial salaries fee (*IC 33-19-6-18*).~~
- (8) A document storage fee (*IC 33-19-6-18.1*).
- (9) An automated record keeping fee (*IC 33-19-6-19*).
- (10) A late payment fee (*IC 33-19-6-20*).

(11) A state police laboratory fee (IC 33-19-6-22) for each action that results in a judgment for a violation constituting an infraction.

(c) The clerk shall transfer to the county auditor or fiscal officer of the municipal corporation the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the user fee fund established under IC 33-19-8:

- (1) The alcohol and drug services program user fee.
- (2) The law enforcement continuing education program fee.
- (3) The deferral program fee.

(d) The defendant is not liable for any ordinance violation costs fee in an action in which:

- (1) the defendant was charged with an ordinance violation subject to IC 33-6-3;
- (2) the defendant denied the violation under IC 33-6-3-2;



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(3) proceedings in court against the defendant were initiated under IC 34-28-5 (or IC 34-4-32 before its repeal); and

(4) the defendant was tried, and the court entered judgment for the defendant for the violation.

(e) Instead of the infraction or ordinance violation costs fee prescribed by subsection (a), the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires payment of those fees by the person charged with the violation. The deferral program fee is:

(1) an initial user's fee not to exceed fifty-two dollars (\$52); and

(2) a monthly user's fee not to exceed ten dollars (\$10) for each month the person remains in the deferral program.

SECTION 5. IC 33-19-6-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 22. In each action in which a defendant is found to have:**

(1) committed a crime; or

(2) violated a statute defining an infraction;

the clerk shall collect a state police laboratory fee of fifteen dollars (\$15).

SECTION 6. IC 33-19-7-1, AS AMENDED BY P.L.183-2001, SECTION 13, AND AS AMENDED BY P.L.280-2001, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) The clerk of a circuit court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

(1) IC 33-19-5-1(a) (criminal costs fees).

(2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-19-5-3(a) (juvenile costs fees).

(4) IC 33-19-5-4(a) (civil costs fees).

(5) IC 33-19-5-5(a) (small claims costs fees).

(6) IC 33-19-5-6(a) (probate costs fees).

(7) IC 33-19-6-16.2 (deferred prosecution fees).

(b) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9-2 the following:

(1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).



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(2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

(3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(7).

(4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-19-5-1(b)(8).

(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-19-6-19).

(c) The clerk of a circuit court shall monthly distribute to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall monthly distribute to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(8). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

~~(e) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial salaries fee.~~

~~(f)~~ (e) The clerk of a circuit court shall monthly distribute to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-19-6-20. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-19-6-1.5 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance under

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subdivision (1), the county auditor shall deposit all the fees in the county general fund.

~~(g)~~ **(f)** The clerk of the circuit court shall semiannually distribute to the auditor of state for deposit in the sexual assault victims assistance fund established under IC 16-19-13-6 one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-19-6-21.

(g) The clerk of the court shall monthly distribute to the auditor of state for deposit in the state police laboratory fund established by IC 10-1-1-29 one hundred percent (100%) of the state police laboratory fees collected by IC 33-19-6-22.

SECTION 7. IC 34-28-5-1, AS AMENDED BY P.L.98-2000, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) An action to enforce a statute defining an infraction shall be brought in the name of the state of Indiana by the prosecuting attorney for the judicial circuit in which the infraction allegedly took place. However, if the infraction allegedly took place on a public highway (as defined in IC 9-25-2-4) that runs on and along a common boundary shared by two (2) or more judicial circuits, a prosecuting attorney for any judicial circuit sharing the common boundary may bring the action.

(b) An action to enforce an ordinance shall be brought in the name of the municipal corporation. The municipal corporation need not prove that it or the ordinance is valid unless validity is controverted by affidavit.

(c) Actions under this chapter (or IC 34-4-32 before its repeal):

- (1) shall be conducted in accordance with the Indiana Rules of Trial Procedure; and
- (2) must be brought within two (2) years after the alleged conduct or violation occurred.

(d) The plaintiff in an action under this chapter must prove the commission of an infraction or ordinance violation by a preponderance of the evidence.

(e) The complaint and summons described in IC 9-30-3-6 may be used for any infraction or ordinance violation.

(f) The prosecuting attorney or the attorney for a municipal corporation may establish a deferral program for deferring actions brought under this section. Actions may be deferred under this section if:

- (1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation;



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(2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee and monthly user's fee set by the prosecuting attorney or the attorney for the municipal corporation in accordance with IC 33-19-5-2(e);

(3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation;

(4) the defendant in the action agrees to pay court costs of twenty-five dollars (\$25) to the clerk of court if the action involves a moving traffic offense (as defined in IC 9-13-2-110); ~~and~~

(5) the defendant in the action agrees to pay to the clerk of the court a state police laboratory fee:

(A) of fifteen dollars (\$15); and

(B) that the clerk of the court shall monthly distribute to the auditor of state for deposit in the state police laboratory fund established by IC 10-1-1-29; and

(6) the agreement is filed in the court in which the action is brought.

When a defendant complies with the terms of an agreement filed under this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action under this subsection, the court shall dismiss the action. An action dismissed under this subsection (or IC 34-4-32-1(f) before its repeal) may not be refiled.

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SENATE MOTION

Mr. President: I move that Senator Alexa be added as second author of Senate Bill 447.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 447, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 9, after "entities" insert "**or higher education institutions (as defined in IC 20-12-5.5-1)**".

Page 2, delete line 4, begin a new paragraph and insert:

"(c) Money in the fund may not be expended unless it has been appropriated by the general assembly."

Page 2, line 5, delete "(c)" and insert "**(d)**".

Page 2, line 7, delete "(d)" and insert "**(e)**".

Page 2, line 10, before "fund" insert "**state general**".

Page 2, line 11, delete "(e)" and insert "**(f)**".

and when so amended that said bill do pass and be reassigned to the Senate Committee on Finance.

(Reference is to SB 447 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 1.

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